

REMARKS

The Office Action dated April 15, 2004 has been received and carefully studied.

The Examiner rejects claims 1, 4-6, 11, 14 and 15 under 35 U.S.C. §102(b) as being anticipated by White, U.S. Patent No. 5,156,811. The Examiner admits that White does not disclose adherence, but concludes that it is inherent of the sealing attachment between the structure 8 (sic, 18?) and the wall 12 of the housing.

The Examiner is respectfully requested to reconsider her position.

At column 3, lines 48-53, White teaches as follows:

"The plug member is preferably force or pressure fitted securely into tube 12, under a pressure of the order of 1800 lb, so that it is securely held and frictionally sealed against the inner wall of tube 12 although not physically attached to the inner wall by any adhesive or other extraneous material."

Such a friction fit is not adherence. Indeed, White expressly and unequivocally teaches away from adherence by stating that the plug is not physically attached to the inner wall. Adherence cannot be inherent in White, since White expressly teaches sealing the plug frictionally.

It is well settled that anticipation by inherency requires that the missing element is necessarily present in the reference. *Schering Corp. v. Geneva Pharmaceuticals, Inc.*, 67 U.S.P.Q.2d 1664 (Fed. Cir. 2003); *Continental Can Co. USA, Inc. v. Monsanto Co.*,

20 U.S.P.Q.2d 1746 (Fed. Cir. 1991). Adherence of the structure to at least a portion of the interior wall of White is not necessarily present where White teaches an alternative means of sealing (friction fit) and expressly excludes physical attachment.

In addition, the structure of White is not self-retaining. A friction fit is used to retain the structure in a sealed relationship with the housing. In contrast, the instant three-dimensional structure is retained by itself, no friction fit is used or is necessary.

The Examiner newly rejects claims 1, 4, 7, 10, 11 and 14 under 35 U.S.C. §102(b) as being anticipated by Fuller, U.S. Patent No. 3,878,092. The Examiner states that Fuller discloses a housing or chromatographic column defining a volume and having a three-dimensional structure comprising sorptive particles entrapped in a porous polymer matrix, the matrix being adhered and retained in the housing interior wall.

Fuller discloses a chromatographic column comprising a hollow member having a partitioning member comprising a crosslinked polymeric material bonded to an interior surface of the hollow member directly or through an intermediate film or coupling agent. The coupling agent bonds to the inner wall and to particulate material, which can be silica.

By the accompanying amendment, claims 1 and 11 have been amended to recite that the polymer is a precipitated inert polymer. Support for the amendment can be found at page 4, last

line, page 5, last full paragraph, page 10, lines 3-4, page 11, first full paragraph, and page 15, lines 1-18, for example.

In accordance with the claims as amended, the present invention relates to a housing containing a structure that is either filled (with a plurality of sorptive particles) or unfilled, comprising a precipitated, inert polymer. Accordingly, in the case where the structures are filled, it is the particles that provide the functionality to the structure. In the case where the structure is unfilled, no functionality is present, and the structure has application for size-based separations.

In contrast, the structure formed in the Fuller columns is polymerized and crosslinked *in situ*, not precipitated. Moreover, the resulting polymer is not inert, but rather contains the functionality necessary for chromatography. Accordingly, Fuller nowhere discloses or suggests the housing as now claimed.

The Examiner newly rejects claims 1-4, 7-14 and 16 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-11, 13-22 of U.S. Patent No. 6,200,474 an further in view of Fuller.

As stated above, the amended claims distinguish Fuller. It is believed that the amendment overcomes this rejection as well.

The remaining prior art is believed to have been properly not relied upon in rejecting any claim.

The amendment is only now being made in view of the new grounds of rejection.

Reconsideration, entry of the amendment, and allowance are respectfully requested in view of the foregoing.

Respectfully submitted,

  
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